

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is the mother of two sons. The older son, who is eighteen years old, lives with her. Last summer, after he graduated from high school, he began working full-time at a job, earning a gross income of \$1,209.37 per month. The younger son, who is fourteen, is living with his father in another town during the school year. The petitioner has legal custody of the boy and has agreed to this living arrangement which includes visitation with her every other weekend. Her youngest son is covered under his father's private medical insurance program. The petitioner, who has a master's degree and some extra credits, has been unemployed for six years and

is still looking for a job in her field, special education. Her only income is derived from current child support payments of \$236.00 monthly. Prior to her son going to live with his father she had received support payments of \$600.00 per month.

2. The petitioner was notified on August 7, 2000 that she needed to come in for an eligibility review for several Department programs and that she needed to contact the Department by September 1. She was also told that if her worker did "not hear from [her] at all" the benefits to be reviewed benefits would end on September 30. The petitioner returned the required forms by August 28, 2000 and arranged to come into the office on September 14, 2000 for an interview. The worker went through the review application with the petitioner and informed her that her older son's commencement of employment and her younger son's living in his father's household would affect her Food Stamps. The petitioner became upset and left the office without signing her application. It was mailed to her and she signed it September 22 and returned it to the office.

3. On September 26, 2000, the Department mailed the petitioner a notice informing her, among other things, that her Food Stamps would cease for September because the household had excess income. She was advised that her older

son would be eligible for Medicaid and that she would be eligible for VHAP. No mention was made of her younger son's Medicaid eligibility although she was informed that he would no longer be eligible for ANFC benefits because he was out of the household. The petitioner appealed that decision on October 3, 2000.¹

4. Although the appeal was filed within ten days after the notice was sent to her, the petitioner's Food Stamp benefits were not continued pending appeal. This was because the Department took the position that her Food Stamp benefits had closed automatically when she did not complete the review by September 20, 2000 and that the signed application received on September 26, 2000 was treated as a new application for the month of October. The petitioner filed several requests for General Assistance help with food following this failure to continue her benefits which were denied. At the petitioner's hearing held October 26, 2000, the hearing officer urged the Department to continue the benefits because the petitioner had made a timely appeal of the only adverse notice she received

¹ The calculation accompanying this first notice did not include any child support income and did not use the new monthly maximums for Food Stamps effective October 1 which set a new maximum of \$1,219.00 per month. Based on the sole use of her son's income of \$1,209.37, the family should have been found to have passed the gross income test. These errors were later corrected.

that she would not be getting benefits.² The Department agreed to do so and the GA decisions were rendered moot.

5. On October 20, 2000, the Department mailed the petitioner a "corrected notice" stating that she should not have been closed for September since she had already gotten that month's benefits at the time of the notice. She was also informed that the Department should have included the "\$259.00" the petitioner reported receiving as child support in the calculations of her Food Stamps. The new gross income was determined to be \$1,468.37 (\$1,209.37 earned by the son and \$259.00 child support). The petitioner was advised that she had failed the \$1,219.00 monthly gross income test for a family of two and that her disqualification would begin October 1. The support amount was later amended to show the actual receipt of \$236.00 per month which reduced the family's

² The August 7 notice to the petitioner told her that she had to contact the Department by September 1 to set up an appointment which she did. She was told that the worker needed to complete her certification by September 20 but that was presented to her as the worker's deadline not hers. The notice further told her that she would be cut off on September 30 only if she did not contact the office at all. The petitioner came to the office on September 14 and left without signing the application. The application was mailed and she returned it signed within a few days but after September 20. She was not told at that time that she would be cut off if the signed application was not returned by September 20. There was no way the petitioner could have known that the Department considered her noncompliant with the original August 7 notice until after the fact of the cut-off and therefore could not have prevented the cut-off with a timely appeal. Interestingly, a notice sent to the Board along with her appeal signed by the District Director stated that her Food Stamp benefits would continue pending her appeal. That, however, did not occur.

gross income to \$1,445.37 monthly, still well-over the maximum limit.

6. The petitioner does not agree that her youngest son should be considered out of the household. She did allow him to go live with his father at the beginning of the 1999 school year in order to attend a different middle school and does not expect him to be back with her full-time until at least the end of the school year. He may stay with his father for high school but that has yet to be determined. (His father teaches at the middle school the boy attends.) The boy's father is in charge of the day to day details but she is still consulted about the big things. He comes home every other weekend and she shares school and summer vacation times equally with the boy's father. She believes that the boy should be considered a household member for Food Stamps, Medicaid, and ANFC purposes.

7. The petitioner does not agree with the calculation of her son's income arguing that the Department must have used some kind of non-recurring overtime in its calculations. The pay stubs that the petitioner herself provided to the Department showed that he is paid \$562.50 every other week as regular gross pay for 75 hours of work. That amounts to \$1,209.37 on a monthly basis (\$281.25 per week x 4.3 weeks)

which is the amount used by the Department. The pay stub did not contain any overtime figures.

8. The petitioner says she receives only a \$50.00 rent payment from her son every month and he does not contribute to other household expenses. She does do the food shopping and they sometimes eat together but he often buys food on his own because he is not home at mealtimes. The petitioner believes it is incorrect to consider that son's income available to her for food.

ORDER

The decision of the Department terminating the petitioner's Food Stamps and her son's ANFC and Medicaid benefits is affirmed.

REASONS

The Food Stamp regulations in general require that persons who live in the same household and who purchase food and prepare meals together are an eligibility unit for purposes of determining Food Stamp eligibility. F.S.M. 273.1(a)(1). However, certain relatives who live together are considered as one eligibility unit, regardless of whether they purchase food and prepare meals together:

2. Special Definition

i The following individuals living with others or groups of individuals living together shall be considered as customarily purchasing food and preparing meals together, even if they do not do so:

. . .

C. Parent(s) living with their natural, adopted or step-children 21 years of age or younger.

F.S.M. 273.1 (a)

The above regulation requires the petitioner and her eighteen-year-old son to be considered one household unit for purposes of Food Stamp eligibility. The regulations require that "all income from whatever source" be included in household income. F.S.M. 273.9 (b). Income to be counted specifically includes all income earned by a household member from earnings and all child support made directly to a household member from a non-household member. F.S.M. 273.9(b)(i) and (iii). Only the earned income of "children who are members of the household, who are students at least half time, and who have not attained their 18th birthday" may be excluded from countable income.

The regulations cited above require that the entire income earned by the petitioner's son be counted toward her Food Stamp eligibility. His income cannot be excluded because

he is not under eighteen years of age and is not a half-time student. As a fully employed, non-student eighteen-year-old the son's income is completely countable in her household income. The Department is thus correct that the petitioner's countable income is \$1,445.37 per month. It is also correct that this amount is in excess of the maximum gross income test for a household of two--\$1219. P-2590 C. If income is in excess of that figure, Food Stamp eligibility is lost. F.S.M. 273.9(a).

The second issue that the petitioner raises is the exclusion of the petitioner's younger son from her household for an array of benefits. Under virtually every program operated by the Department, a child must be "living in" the parent's home to be considered a member of that household. Under the ANFC regulations, a child must be living with a relative in a home "in which the relative . . . assumes responsibility for care and supervision of the child(ren)" and they must share the same household." W.A.M. 2303.13. If the child is out of the home for more than 30 days, eligibility will cease unless the caretaker relative can show that she "continues or supervises" continuing care and supervision and that the child is expected to return within six months. W.A.M. 2224. The Medicaid program uses the same eligibility

criteria as the ANFC program when dependent children are involved. M 300.2 A. Similarly the Food Stamp program requires that the child be included in the household if he is "living" in the home of the parent. F.S.M. 273.1(2). "Living in" the home is not defined further in any of the regulations. However, the Board has repeatedly held that when a child lives part-time in the home of parents who live apart, it must be determined in which place the child has his or her principal residence. The principal residence is the place where the child spends the majority of his time and thus has the most significant attachment for purposes of determining need for assistance programs. A principal home must be designated because it is not legally possible to share or pro-rate benefits between households. Only one household can be eligible for benefits as the residence of the child.

In this case the petitioner's child spends about 15% of his time during the school year with the petitioner and about 85% with his father in whose town he attends school. The boy's principal residence is clearly with his father and only his father could apply for benefits for the boy at this point. Since the boy is "living with" his father as that term has been defined by the Board, the petitioner cannot apply for

benefits for him as part of her household.³ The fact that the petitioner is the legal custodian of the boy would only be significant if the percentage of the physical custody were close to fifty-fifty. The focus of the program is to determine where the child spends most of his time for purposes of assessing the financial support available to him at that place.

The Department has correctly determined that the petitioner's younger son is not "living" in her household for purpose of the various public benefits programs. As the decision of the Department is in accordance with its regulations, its decision must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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³ Of course at any time that the boy starts spending 50% or more of his time at her household for a month or more, she could notify the Department and apply for benefits for that month.